



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Bruneau Field Office  
3948 Development Avenue  
Boise, Idaho 83705

<http://www.id.blm.gov/offices/lsrcd>



In Reply Refer To:  
4130 ID120 – 1100291

John Anchustegui  
3054 E. Rivernest Drive  
Boise, Idaho 83706

### **NOTICE OF FIELD MANAGER'S PROPOSED DECISION**

Dear Mr. Anchustegui:

#### **INTRODUCTION**

This grazing decision is being issued to address your application of October 31, 2006 to convert the kind of livestock on Pasture 17 of your East Castle Creek Allotment (#0893) from cattle to sheep within your current term grazing permit. For purposes of this grazing decision, your October 31, 2006, Grazing Application will be referenced as the Application. BLM has completed an Environmental Assessment (EA#ID-120-2007-EA-1) of your Application to evaluate impacts of the conversion within this pasture and adjoining pastures of the East Castle Creek Allotment and in the adjoining allotments. BLM is required to respond to your 2006 Application as directed by current grazing regulations (43CFR 4130.1) and also by current BLM policy (Instruction Memorandum ID-2004-086). This Proposed Decision provides the required response to your Application, based upon the findings of the EA.

#### **BACKGROUND**

The Bruneau Management Framework Plan (MFP) and Final EIS were adopted in March 1983. The Bruneau MFP is the land use plan that guides the Bruneau Field Office grazing management program and identifies objectives to be attained on public lands. The objectives generally are to improve soils, water quality, vegetation, watershed, fish, wildlife, sensitive species and other resource conditions and to provide usable vegetation for livestock and wildlife and for non-consumptive uses.

In September, 1997, the Bruneau Field Office completed and mailed the Castle Creek Allotment Final Analysis, Interpretation, and Evaluation (AIE). The AIE is the equivalent of the

Assessment documents that BLM has completed in Idaho since the issuance of Instruction Memorandum ID-1998-077 on May 22, 1998. Final Determinations were completed for the Castle Creek Allotments in conformance with IM ID-1998-077 on June 10, 1998. Permitted use in East Castle Creek Allotment was and continues to be made by cattle. The East Castle Creek Allotment includes the fringe habitats for the Shoofly Creek California bighorn sheep herd. The Final Determinations stated that Standard 8 had been met for upland bighorn sheep populations in steep canyons and that it may not have been met in upland plateau habitats in the early spring pasture (0893-8B). The Final Determinations also stated that Standard 8 had not been met in riparian communities within bighorn sheep habitat (0893-8B and 0893-14). In the adjoining Battle Creek Allotment #0802, which contains the core habitats for the Shoofly Creek California bighorn sheep herd, BLM issued a Final AIE and Determination on July 19, 1999. The Final Determination stated that Standard 8 was met for bighorn sheep within that allotment. Permitted use in Battle Creek Allotment was and continues to be made by cattle.

On December 22, 1997, the Bruneau Field Manager issued Final Decisions to implement grazing management outlined in the Proposed Action found in Environmental Assessment No.ID-01-97-103 necessary to make significant progress towards meeting Rangeland Health Standards and Guidelines in the East Castle Creek Allotment. This Final Decision was appealed.

In December, 2003, Owyhee Calcium Products (OCP) filed a 7(b) application to transfer their permit to John Anchustegui for the spring, winter, and FFR pastures within East Castle Creek Allotment. That application included the permitted use currently recognized in Pasture 17 and involved in your current Application. The associated private land was sold to John Anchustegui in a separate transaction.

In January 2004, the appellants and BLM began settlement discussions to resolve the appellants' issues related to the Final Decisions of December 22, 1997. On July 9, 2004, the BLM's solicitor, Mr. Ken Seby, signed the Stipulation to Adjust/Modify Decisions and to Dismiss Appeal of the Final Decisions dated December 22, 1997, agreeing to implement the grazing management modifications outlined in a stipulated agreement. The stipulated agreement included the following grazing management modifications: Active and Nonuse AUMs, Grazing Rotation, Management Flexibility, Range Projects, Short Term Objectives, and a BLM timeline for issuance of new grazing decisions.

The elements of the Stipulated Agreement as embodied in the current permit (GRN 1100291) for John Anchustegui in East Castle Creek Allotment are summarized as follows in Table 1:

### **2004 STIPULATED AGREEMENT**

**Table 1. Total Permitted Use for John Anchustegui (1100291) (Consolidated OCP and GFGA permits)**

ALLOTMENT/PASTURE GROUPING	LIVESTOCK NO. & KIND	GRAZING PERIOD		ACTIVE AUMS	SUSPENDED AUMS	NONUSE AUMS
		BEGIN	END			
East Castle Ck. 0893-Spring Pastures	615 cattle	April 1	June 17	1,577	0	516

<b>East Castle Ck. 0893-Summer Pastures</b>	253 cattle	June 18	August 31	624	0	0
<b>East Castle Creek 0893-Winter Pastures</b>	30 cattle	November 1	January 31	91	0	0
<b>East Castle Creek 0893-All FFR Pastures including pasture 17</b>		April 1	November 30	88	0	0
<b>Total AUM (Active and Non-Use) for East Castle Creek Allotment</b>				2,377	0	

### **Terms and Conditions on the Current Permit**

1. Grazing use in the East Castle Creek Allotment will be in compliance with the December 1997 GFGA and OCP Final Decisions except as modified by the Stipulated Agreement for the King and GFGA appeals of July 9, 2004.

### **GRAZING APPLICATION**

On October 31, 2006, I received a Grazing Application from John Anchustegui for a change in the kind of livestock for pasture 17 on his East Castle Creek Allotment Permit. The application was applying for a change from cattle use to domestic sheep use in Pasture 17 in the East Castle Creek Allotment. There were no other proposed changes to the current permit except for the change in kind of livestock for pasture 17 in the application. The proposed change for Pasture 17 identified in the Grazing Application was as follows:

#### **From:**

Allotment & Pasture	Livestock		Season of Use	PL%	AUMs		
	Number	Kind			Active	Suspended	Permitted
East Castle Creek (0893), Pasture 17	7	Cattle	4/1 – 11/30	100%	54	0	54
<b>Total</b>					<b>54</b>	<b>0</b>	<b>54</b>

#### **To:**

Allotment & Pasture	Livestock		Season of Use	PL%	AUMs		
	Number	Kind			Active	Suspended	Permitted
East Castle Creek (0893), Pasture 17	34	Sheep	4/1 – 11/30	100%	54	0	54

The proposed sheep use in Pasture 17 would be from spring through fall. Sheep would be attended by a herder to minimize losses due to predation; however, sheep would not be actively herded. Because there were no other changes requested in John Anchustegui's permit except for Pasture 17, further discussion in this decision will focus on specifically Pasture 17 which was identified in the permittees grazing application for request for change in kind of livestock.

### **FINDING OF POTENTIAL SIGNIFICANT IMPACT**

Based on the findings documented in Environmental Assessment ID120-2007-EA-1, implementation of the Proposed Action may significantly affect the quality of the human

environment. Therefore, further environmental analysis in the form of an Environmental Impact Statement (EIS) is required.

## **PROPOSED DECISION**

My proposed decision is to continue to implement the current management described in the attached Environmental Assessment EA # ID-120-2007-EA-1, under Alternative A. Due to the Finding of Potential Significant Impact, and the fact that further environmental analysis (i.e., preparation of an Environmental Impact Statement [EIS]) is necessary and required by the NEPA, the following constitutes my decision upon your Application of October 31, 2006:

1. Your Application to change the kind of livestock from cattle to sheep for use on federal lands included within Pasture 17 of your East Castle Creek Allotment (#0893) is denied at this time. The permitted use currently recognized for John Anchustegui specifically within Pasture 17 will remain as outlined in Alternative A in EA # ID-120-2007-EA-1; specifically for pasture 17 as follows:

**Table 2. Permitted Use for John Anchustegui (1100291), Pasture 17, East Castle Creek Allotment**

Allotment & Pasture	Livestock		Season of Use	PL%	AUMs		
	Number	Kind			Active	Suspended	Permitted
East Castle Creek (0893), Pasture 17	7	Cattle	4/1 – 11/30	100%	54	0	54
<b>Total</b>					<b>54</b>	<b>0</b>	<b>54</b>

2. Your current Grazing Permit will remain as it currently is. The kind of livestock for pasture 17 will remain as cattle use. All grazing management in Pasture 17 of the East Castle Creek Allotment will be authorized as previously defined in Alternative A of EA # ID-120-2007-EA-1 and as identified in Table 1 of this Decision. Specifically, the grazing management of included federal lands within Pasture 17 will adhere to the existing Mandatory Terms and Conditions; including the kind of livestock specified by the current grazing permit.
3. In addition, the 2004 Settlement Agreement and all management objectives and guidelines that were identified in the 2004 Settlement between appellants and BLM will remain in effect until a fully processed grazing permit is issued prior to the 2008 grazing season for the East Castle Creek Allotment.

## **RATIONALE**

A BLM sensitive species, the California bighorn sheep, is known to occur within the immediate area of public lands affected by your Application. There is a significant risk that these bighorn sheep could come into physical contact with domestic sheep if domestic sheep were authorized to graze in the region. Additionally, many studies suggest that even limited contact between the two species result in disease transmission. While there are dissenting viewpoints that there may not be a risk of sufficient physical contact to transmit disease under range conditions, these viewpoints are not supported by conclusive or definitive studies and the authors still acknowledge the potential for disease transmission. Broad-based evidence presented in EA #ID-

120-2007-EA-1 indicates that there is a high degree of likelihood that the proposed action would adversely affect bighorn sheep. Further extensive environmental analysis in the form of an EIS would be required to fully understand the potential effects.

The degree of possible effects on the human environment if your Application is allowed is highly uncertain and contains significant unknown risks. BLM Instruction Memorandum # 98-140 recommends buffer strips up to 9 miles. Because of their wide-ranging nature, the habitat lines for bighorn sheep are approximations and, as a result, the buffer distances required to prevent contact is uncertain. Additionally, while many studies suggest that catastrophic die-offs of bighorn sheep are the result of disease transmission from the physical contact between domestic and bighorn sheep, some contend that those diseases may not be the cause of the die-offs.

Further, the action analyzed in EA #ID-120-2007-EA-1 may set precedents concerning the authorization of domestic sheep grazing in areas that may impact bighorn sheep populations. Because of the potentially precedent-setting decision, additional environmental analysis and extensive scoping is required.

Finally, the Proposed Action may violate regulations of Federal, State, and local laws for the protection of the environment. The potential for catastrophic consequences in the form of a massive die off of the bighorn sheep herds in the immediate area remains. The requirement to take “extraordinary actions to protect a sensitive species” as delineated in BLM Instruction Memorandum 98-140 indicates that a more complete and extensive environmental analysis in the form of an EIS would be needed to quantify the potential for contact between domestic and bighorn sheep and likelihood for catastrophic consequences.

### **AUTHORITY**

The authority for this decision is contained in Title 43 of the Code of Federal Regulations (CFR), which includes:

4100.0-8, Land Use Plans.  
4130.1, Applications  
4130.2, Grazing Permits or Leases.  
4130.3, Terms and Conditions.  
4130.3-1, Mandatory Terms and Conditions.  
4160.1, Proposed Decisions.  
4160.2, Protests.  
4160.3, Final Decisions.  
4160.4, Appeals.  
4180.2, Standards and Guidelines for Grazing Administration.

### **RIGHT OF PROTEST AND/OR APPEAL**

Any applicant, permittee, or lessee or other interested publics may protest a proposed decision under Sec. 43 CFR 4160.1 and 4160.2, in person or in writing to *Mitchell A. Jaurena –Bruneau Field Manager at 3948 Development Avenue, Boise, Idaho 83705*, within 15 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

In accordance with 43 CFR 4160.3(a), in the absence of a protest, this proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

In accordance with 43 CFR 4160.3(b) upon a timely filing of a protest, after a review of protests received and other information pertinent to the case, the authorized officer shall issue a final decision.

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal (*in writing*) in accordance with 43 CFR 4.470 and 43 CFR 4160.4. The appeal must be filed within 30 days following receipt of the final decision or within 30 days after the date the proposed decision becomes final. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471, pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer (*as noted above*). The person/party must also serve a copy of the appeal on the *Office of the Solicitor, Field Solicitor - U.S. Department of the Interior, University Plaza, 960 Broadway Avenue, Suite 400, Boise, ID 83706*, and person(s) named [43 CFR 4.421(h)] in the Copies sent to: section of this decision.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise complies with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and serviced in accordance with 43 CFR 4.471. Any person named in the decision that receives a copy of a petition for a stay and/or an appeal see 43 CFR 4.472(b) for procedures to follow if you wish to respond.

If you have any questions, feel free to contact either Mike Boltz-Rangeland Specialist at (208) 384-3346, or myself at (208) 384-3331.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Jaurena', with a long, sweeping horizontal line extending to the right.

Mitchell A. Jaurena  
Bruneau Field Manager

Attachments:

EA#ID-120-2007-EA-1

FOPSI for EA#ID-120-2007-EA-1

Copies sent to: (see attached list)